

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAL MCNUTT, an individual, and
RYAN MCNUTT, individually and as
Personal Representative of the ESTATE
OF ALLEN DUANE MCNUTT, deceased,

Plaintiffs,

v.

KING COUNTY CORRECTIONAL
FACILITY, a local King County entity;
CORTNEY ECHTERNACH, an individual;
COZETTE COLE, an individual; OMER
BEHAUDEN, an individual,

Defendants.

No. 2:24-cv-02077-RSL

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery,

1 the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under the applicable legal
3 principles, and it does not presumptively entitle parties to file confidential information
4 under seal.

5 2. "CONFIDENTIAL" MATERIAL

6 "Confidential" material shall include the following documents and tangible things
7 produced or otherwise exchanged: autopsy records; financial records; other records
8 that could implicate privacy rights of the parties or nonparties, including records
9 containing birthdates, Social Security numbers, home addresses, phone numbers, and
10 e-mail addresses; King County Department of Adult and Juvenile Detention records the
11 disclosure of which could potentially affect the safety, security, or good order of the jail,
12 including policy/procedure manuals, rosters, logs, reports, time cards, shift information,
13 employee names, and photographs and floor plans of jail facilities; and any information
14 protected by statute from release or disclosure.

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential material
17 (as defined above), but also (1) any information copied or extracted from confidential
18 material; (2) all copies, excerpts, summaries, or compilations of confidential material;
19 and (3) any testimony, conversations, or presentations by parties or their counsel that
20 might reveal confidential material.

21 However, the protections conferred by this agreement do not cover information
22 that is in the public domain or becomes part of the public domain through trial or
23 otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is
3 disclosed or produced by another party or by a non-party in connection with this case
4 only for prosecuting, defending, or attempting to settle this litigation. Confidential
5 material may be disclosed only to the categories of persons and under the conditions
6 described in this agreement. Confidential material must be stored and maintained by a
7 receiving party at a location and in a secure manner that ensures that access is limited
8 to the persons authorized under this agreement.

9 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
10 ordered by the court or permitted in writing by the designating party, a receiving party
11 may disclose any confidential material only to:

12 (a) the receiving party's counsel of record in this action, as well as
13 employees of counsel to whom it is reasonably necessary to disclose the information for
14 this litigation;

15 (b) the officers, directors, and employees (including in house counsel)
16 of the receiving party to whom disclosure is reasonably necessary for this litigation,
17 unless the parties agree that a particular document or material produced is for
18 Attorney's Eyes Only and is so designated;

19 (c) experts and consultants to whom disclosure is reasonably
20 necessary for this litigation and who have signed the "Acknowledgment and Agreement
21 to Be Bound" (Exhibit A);

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the

1 duplication of confidential material; provided that counsel for the party retaining the copy
2 or imaging service instructs the service not to disclose any confidential material to third
3 parties and to immediately return all originals and copies of any confidential material;

4 (f) during their depositions, witnesses in the action to whom disclosure
5 is reasonably necessary and who have signed the "Acknowledgment and Agreement to
6 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by
7 the court. Pages of transcribed deposition testimony or exhibits to depositions that
8 reveal confidential material must be separately bound by the court reporter and may not
9 be disclosed to anyone except as permitted under this agreement;

10 (g) the author or recipient of a document containing the information or
11 a custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing Confidential Material. Before filing confidential material or discussing
13 or referencing such material in court filings, the filing party shall confer with the
14 designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether
15 the designating party will remove the confidential designation, whether the document
16 can be redacted, or whether a motion to seal or stipulation and proposed order is
17 warranted. During the meet and confer process, the designating party must identify the
18 basis for sealing the specific confidential information at issue, and the filing party shall
19 include this basis in its motion to seal, along with any objection to sealing the
20 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
21 followed and the standards that will be applied when a party seeks permission from the
22 court to file material under seal. A party who seeks to maintain the confidentiality of its
23 information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not

1 the party filing the motion to seal. Failure to satisfy this requirement will result in the
2 motion to seal being denied, in accordance with the strong presumption of public access
3 to the Court's files.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each party or non-party that designates information or items for protection under this
7 agreement must take care to limit any such designation to specific material that qualifies
8 under the appropriate standards. The designating party must designate for protection
9 only those parts of material, documents, items, or oral or written communications that
10 qualify, so that other portions of the material, documents, items, or communications for
11 which protection is not warranted are not swept unjustifiably within the ambit of this
12 agreement.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that
14 are shown to be clearly unjustified or that have been made for an improper purpose
15 (e.g., to unnecessarily encumber or delay the case development process or to impose
16 unnecessary expenses and burdens on other parties) expose the designating party to
17 sanctions.

18 If it comes to a designating party's attention that information or items that it
19 designated for protection do not qualify for protection, the designating party must
20 promptly notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise
23 stipulated or ordered, disclosure or discovery material that qualifies for protection under

1 this agreement must be clearly so designated before or when the material is disclosed
2 or produced.

3 (a) Information in documentary form: (e.g., paper or electronic
4 documents and deposition exhibits, but excluding transcripts of depositions or other
5 pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL"
6 to each page that contains confidential material. If only a portion or portions of the
7 material on a page qualifies for protection, the producing party also must clearly identify
8 the protected portion(s) (e.g., by making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial proceedings: the
10 parties and any participating non-parties must identify on the record, during the
11 deposition or other pretrial proceeding, all protected testimony, without prejudice to their
12 right to so designate other testimony after reviewing the transcript. Any party or non-
13 party may, within fifteen days after receiving the transcript of the deposition or other
14 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
15 confidential. If a party or non-party desires to protect confidential information at trial, the
16 issue should be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent
18 place on the exterior of the container or containers in which the information or item is
19 stored the word "CONFIDENTIAL." If only a portion or portions of the information or item
20 warrant protection, the producing party, to the extent practicable, shall identify the
21 protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive the

1 designating party's right to secure protection under this agreement for such material.
2 Upon timely correction of a designation, the receiving party must make reasonable
3 efforts to ensure that the material is treated in accordance with the provisions of this
4 agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a designation
7 of confidentiality at any time. Unless a prompt challenge to a designating party's
8 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
9 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
10 party does not waive its right to challenge a confidentiality designation by electing not to
11 mount a challenge promptly after the original designation is disclosed.

12 6.2 Meet and Confer. The parties must make every attempt to resolve any
13 dispute regarding confidential designations without court involvement. Any motion
14 regarding confidential designations or for a protective order must include a certification,
15 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
16 meet and confer conference with other affected parties in an effort to resolve the dispute
17 without court action. The certification must list the date, manner, and participants to the
18 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
19 conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
21 court intervention, the designating party may file and serve a motion to retain
22 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if
23 applicable). The burden of persuasion in any such motion shall be on the designating

1 party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or
 2 impose unnecessary expenses and burdens on other parties) may expose the
 3 challenging party to sanctions. All parties shall continue to maintain the material in
 4 question as confidential until the court rules on the challenge.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 6 OTHER LITIGATION

7 If a party is served with a subpoena or a court order issued in other litigation that
 8 compels disclosure of any information or items designated in this action as
 9 “CONFIDENTIAL,” that party must:

10 (a) promptly notify the designating party in writing and include a copy
 11 of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or
 13 order to issue in the other litigation that some or all of the material covered by the
 14 subpoena or order is subject to this agreement. Such notification shall include a copy of
 15 this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be
 17 pursued by the designating party whose confidential material may be affected.

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 20 confidential material to any person or in any circumstance not authorized under this
 21 agreement, the receiving party must immediately (a) notify in writing the designating
 22 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
 23 copies of the protected material, (c) inform the person or persons to whom unauthorized

disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

Pursuant to Federal Rule of Evidence 502(d), the production of any documents, electronically stored information (ESI), or other records, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). The provisions of Federal Rule of Evidence 502(b) do not apply.

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must delete or destroy all confidential material that was disclosed or produced by another party or by a nonparty in connection with this case, including all copies, extracts and summaries thereof.

Notwithstanding this provision, counsel are entitled to retain one archival copy of

all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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**Per 12/27/2024 e-mail authorization*

s/Geoff Grindeland

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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection

1 allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
2 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a
3 review of documents, ESI or information (including metadata) for relevance,
4 responsiveness and/or segregation of privileged and/or protected information before
5 production. Information produced in discovery that is protected as privileged or work
6 product shall be immediately returned to the producing party.

7 DATED this 30th day of December, 2024.

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10 Robert S. Lasnik
11 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Western
District of Washington on _____ in the case of *McNutt, et al. v. King
County Correctional Facility, et al.* (Case No. 2:24-cv-02077-RSL). I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to
any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Western District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

I certify that on the date below I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Plaintiffs

I further certify that on the date below I mailed by U.S. Postal Service a copy of the foregoing document to the following non-CM/ECF participants:

N/A

DATED: December 27, 2024

s/Geoff Grindeland
Geoff Grindeland